

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

**IN RE: REALPAGE, INC., RENTAL  
SOFTWARE ANTITRUST LITIGATION  
(NO. II)**

**Case No. 3:23-MD-3071  
MDL No. 3071**

**This Document Relates to:  
ALL CASES**

**Chief Judge Waverly D. Crenshaw, Jr.**

**CERTAIN DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO PLEAD  
AGENCY LIABILITY**

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants Avenue5 Residential, LLC (“Avenue5”), Bozzuto Management Company (“BMC”),<sup>1</sup> FPI Management, Inc. (“FPI”), Pinnacle Property Management Services, LLC (“Pinnacle”), and ZRS Management, LLC (“ZRS”) (collectively, “the Property Management Defendants”) move for dismissal of the Multifamily Housing First Amended Consolidated Class Action Complaint (ECF No. 314) for failure to state a claim. For the reasons articulated in Certain Defendants’ Memorandum of Law in Support of Motion to Dismiss for Failure to Plead Agency Liability and the accompanying Declaration of James G. Kress, which has been filed contemporaneously herewith, the Court should grant the

---

<sup>1</sup> BMC was not specifically identified among the defendants making this motion in the prior notice to the Court, but rather was among the “similarly-situated Defendants” referenced in the notice that were considering joining the motion. *See* Notice of Number and Nature of Defendants’ Anticipated Motions and Motion for Excess Pages at 5 (June 21, 2023) ECF No. 297. The above-named Defendants make this motion without intending any impact as to the ability of other Defendants to raise similar agency arguments in the future.

Property Management Defendants' Motion and dismiss Plaintiffs' claims in their entirety as to the Property Management Defendants.

Pursuant to LR 7.01, the undersigned counsel certify that they have conferred with Plaintiffs' Interim Co-Lead Counsel who indicated that Plaintiffs will stand on their allegations and will oppose the relief sought by this motion.

DATED: July 7, 2023

Respectfully submitted,

/s/ Danny David

Danny David  
danny.david@bakerbotts.com  
BAKER BOTT LLP  
910 Louisiana Street  
Houston, TX 77002  
Telephone: (713) 229-4055

James Kress  
(*pro hac* forthcoming)  
james.kress@bakerbotts.com  
Paul Cuomo  
(*pro hac* forthcoming)  
paul.cuomo@bakerbotts.com  
BAKER BOTT LLP  
700 K. Street, NW  
Washington, DC 20001  
Telephone: (202) 639-7884

*Counsel for Defendant Avenue5 Residential,  
LLC*

/s/ James D. Bragdon

James D. Bragdon  
jbragdon@gejlaw.com  
Sam Cowin  
scowin@gejlaw.com  
GALLAGHER EVELIUS & JONES LLP  
218 N. Charles St., Suite 400  
Baltimore, MD 21201  
Telephone: (410) 727-7702

Philip A. Giordano (admitted *pro hac vice*)  
philip.giordano@hugheshubbard.com  
HUGHES HUBBARD & REED LLP  
1775 I Street NW  
Washington, DC 20007  
Telephone: (202) 721-4776

Charles E. Elder, BPR # 038250  
celder@bradley.com  
BRADLEY ARANTBOULT CUMMINGS LLP  
1600 Division Street, Suite 700  
Nashville, Tennessee 37203  
P: 615.252.3597

*Counsel for Defendant Bozzuto Management  
Company*

*/s/ Charles H. Samel*

---

Charles H. Samel  
charles.samel@stoel.com  
Edward C. Duckers  
ed.duckers@stoel.com  
STOEL RIVES LLP  
1 Montgomery Street, Suite 3230  
San Francisco, CA 94104  
Telephone: (415) 617-8900

George A. Guthrie  
gguthrie@wilkefleury.com  
WILKE FLEURY LLP  
621 Capitol Mall, Suite 900  
Sacramento, CA 95814  
Telephone: (916) 441-2430

*Counsel for Defendant FPI Management, Inc.*

*/s/ Kenneth Reinker*

---

Kenneth Reinker  
kreinker@cgsh.com  
CLEARY GOTTLIEB STEEN & HAMILTON LLP  
2112 Pennsylvania Avenue, NW  
Washington, DC 20037  
Telephone: (202) 974-1522

Joseph M. Kay  
jkay@cgsh.com  
CLEARY GOTTLIEB STEEN & HAMILTON LLP  
One Liberty Plaza  
New York, NY 10006  
Telephone: (212) 225-2745

*Counsel for Defendant Pinnacle Property Management Services, LLC*

*/s/ Ferdose al-Taie*

---

Ferdose al-Taie (admitted *pro hac vice*)  
faltaie@bakerdonelson.com  
BAKER, DONELSON, BEARMAN CALDWELL &  
BERKOWITZ, P.C.  
956 Sherry Lane, 20<sup>th</sup> Floor  
Dallas, TX 75225  
Telephone: (214) 391-7210

Christopher E. Thorsen (BPR # 21049)  
cthorsen@bakerdonelson.com  
BAKER, DONELSON, BEARMAN CALDWELL &  
BERKOWITZ, P.C.  
Baker Donelson Center, Suite 800  
211 Commerce Street  
Nashville, TN 37201  
Telephone: (615) 726-5600  
*Counsel for Defendant ZRS Management, LLC*

## CERTIFICATE OF SERVICE

I hereby certify that on July 7, 2023, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record registered on the CM/ECF system.

DATED this 7th day of July, 2023.

/s/ Kenneth Reinker  
Kenneth Reinker